

# STATEMENT OF THE ISSUES

## SUMMARY OF THE PARTIES'S POSITIONS

Counsel for the defendants/appellees summarized their position at the hearing on the *Motion to Alter or Amend* :

“... and Mr. Jessee was here and we did agree that this lawsuit is basically a nuisance case filed by somebody who wants to be in a neighborhood club and they don't want him in it. And it's like if you want to be in my mother's bridge club and they don't want you in there, I'm sorry, you can't sue to get in. It doesn't matter that, you know, they've taken part or done something ...

**“[H]e's really just not wanted and it doesn't matter why. So that would be our position,** and hopefully the Final Decree entered stands for what it says ... “

Tr. p.10, lines 10-16; Tr. p. 13, lines 8-10; [bold added].

Plaintiff/appellant's position is that the trial court's entry of the *Final Decree* conflicts with the Tennessee Rules of Civil Procedure and with the Local Rules of the First Judicial District, as well as with the Record which demonstrates that the plaintiff was duly elected to a definite two year term as President of Southside Neighborhood Organization and that he has not been removed from office except by the improper *Final Decree*.

## QUESTIONS PRESENTED

Appellant asks whether the trial court erred :

1. by incorporating surprise declaratory and injunctive relief in favor of the defendants/appellees into an order of dismissal.
2. by incorporating material extrinsic to the record and to the file into its mandatory injunction directed against the plaintiff/appellant (“Green”).
3. by entering the *Final Decree* in the absence of either a verbatim transcript or filed

documents sufficient to assure an appellate court of the propriety of that *Final Decree*, and without allowing Green the 10 days prescribed by Local Rule 6.01.C for submission of an alternative order.

4. by dismissing the action rather than permitting Green either to initiate or to participate in proceedings for summary judgment pursuant to Rule 12.02, Tennessee Rules of Civil Procedure, after the court considered the *Answer* and *Affidavits* of the defendants.

5. by failing to recognize that Green set forth a valid cause of action at least insofar as a mutually reciprocal contract is created by the *Bylaws*' prerequisite that each member sign a pledge to support those *Bylaws*, which explicitly incorporate Robert's Rules of Order which guarantee both due process and Green's term of office.

6. by failing to recognize Green's property right in the office to which he won election.

7. by declaring that Green's *Motion for Temporary Injunction* had been "properly denied" in the absence of any documented hearing and of any order setting forth the findings of fact and conclusions of law required by Rule 65.04(6) and Rule 52.01, TN.R.Civ.P.

8. at the hearing on Green's *Motion to Alter or Amend* by refusing to enforce Local Rule 5.01.B , which provides that a motion will be heard unopposed where no response in opposition has been filed.

9. by reaffirming the *Final Decree*.

Appellant further notes that defendant/appellee Sherrod caused to be entered an *Order* waiving his right to countersue, and that Sherrod subsequently countersued on behalf of all other defendants for up to \$150,000.00.

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